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UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

ELLERY J. PETTIT,) CASE NO. 2:11-cv-00149-GMN-PAL
Plaintiff,)
)
v.)
)
PULTE MORTGAGE LLC and CHASE BANK)
and CHASE HOME FINANCE LLC and IBM)
LENDER BUSINESS PROCESS SERVICES)
and MERS (Mortgage Electronic Registration)
System),)
)
Defendants.)

Defendant Chase Home Finance LLC (“Chase”), by and through its counsel, Smith Larsen & Wixom, hereby submits this reply to the Opposition to Chase’s Waiver of Service (the “Waiver of Service”) filed by Plaintiff Ellery J. Pettit.

Plaintiff filed the instant Complaint on or about January 28, 2011, and summonses as to each defendant were issued the same day. (*See* Docket Nos. 1 and 3.) Thereafter, on or about February 22, 2011, Plaintiff filed his “Certificate of Service,” indicating that defendant Chase

(among others) had been served with a copy of the summons and Complaint by "First Class U.S. Mail" on or about February 3, 2011. (See Docket No. 5.)

Under Fed. R. Civ. P. 4, the *only* acceptable means of serving a defendant by first class mail is to request a waiver of service. *See* Fed. R. Civ. P. 4(d). While Chase is not aware of receiving a request for waiver of service, given the purported service by mail, and the expenses imposed on defendants for failure to waive service if requested, Chase agreed to voluntarily waive service out of an abundance of caution. (*See* Docket No. 7.) *See also* Fed. R. Civ. P. 4(d)(2) (defendant who fails to return waiver of service upon receipt from plaintiff must pay costs incurred in making service and any expenses in moving to collect such costs).

Having executed a voluntary Waiver of Service, Chase has no obligation to file any responsive pleading to the Complaint until April 4, 2011. (*See* Docket Entry 7.) *See also* Fed. R. Civ. P. 4(d)(3) (allowing 60 additional days for response where defendant has waived service). As such, any purported request for entry of default as against Chase is improper at this juncture.

In sum, the Waiver of Service was properly executed, and Plaintiff's request to strike that document should be summarily denied. Further, because Chase's deadline to file a responsive pleading has not yet arrived, any purported request for entry of default as against Chase by Plaintiff would be improper, and should also be denied.

DATED this 10th day of March, 2011.

SMITH LARSEN & WIXOM



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 10 day of March, 2011, a true copy of the foregoing
Chase Home Finance LLC's Reply to Plaintiff's Opposition to Waiver of Service was served
electronically via CM/ECF, or by mail, postage prepaid, to the following:

Ellery J. Pettit
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Plaintiff in Pro Per
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